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Paper No. 9

JORGE TAYLOR
274 W. 40 Street
Apt. #28
New York, NY 10018

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SEP 12 2005

OFFICE OF PETITIONS

In re Patent No. 5,178,701 :
Jorge Taylor :
Issue Date: January 12, 1993 : ON
Application No. 07/710,752 : PETITION
Filed: May 31, 1991 :
Title: CHEMICAL SEALANT DEVICE:
FOR REPAIRING FLAT TIRES :

This is in response to the communication received April 1, 2005. Patentee requests reinstatement of the above-identified patent on the basis that the maintenance fee was timely paid.

The patent issued January 12, 1993. The window for paying the 7- $\frac{1}{2}$ year maintenance fee without surcharge extended from January 12, 2000 through July 12, 2000. The window for paying the 7- $\frac{1}{2}$ year maintenance fee with surcharge opened on July 13, 2000, and extended to July 12, 2001.

Patentee submits evidence in the form of a cancelled check to show that payment in the amount of \$1,030 was submitted to the Office on or about January 12, 2001. Patentee further states that he first became aware that the Office considered the maintenance fee not paid, when he attempted to pay the 2004 fee. However, patentee does not enclose the petition fee.

RELEVANT REGULATIONS

§ 1.366 Submission of maintenance fees, provides that:

(c) In submitting maintenance fees and any necessary surcharges, identification of the patents for which maintenance

fees are being paid must include the patent number, and the application number of the United States application for the patent on which the maintenance fee is being paid. If the payment includes identification of only the patent number (i.e., does not identify the application number of the United States application for the patent on which the maintenance fee is being paid), the Office may apply the payment to the patent identified by patent number in the payment or may return the payment.

§ 1.377 Review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of patent, further provides that:

(a) Any patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and record the maintenance fee.

(b) Any petition under this section must be filed within 2 months of the action complained of, or within such other time as may be set in the action complained of, and must be accompanied by the fee set forth in § 1.17(g). The petition may include a request that the petition fee be refunded if the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

(c) Any petition filed under this section must comply with the requirements of § 1.181(b) and must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

ANALYSIS

The petition is not accompanied by the required fee under § 1.17(g) or a written authorization to charge the fee to a Deposit Account. Payment of the petition fee of \$200 is a prerequisite to consideration of a petition under § 1.377.

Accordingly, the decision on petition under § 1.377 is **DISMISSED** without consideration on the merits.

However, under the circumstances, it is appropriate to advise *pro se* applicant as follows: Using petitioner's evidence, it has been confirmed that a payment of \$1,030 was received in the Office in January of 2001. However, the required fees due at that time totalled \$1,040. Specifically, the 7-½ surcharge was \$975 and the late surcharge within 6 months was \$65. Thus, accepting that \$1,030 was submitted, it cannot be concluded that the required maintenance fee and surcharge to accept late maintenance fee were timely submitted. Accordingly, the patent is properly considered expired.

Patentee's response to be considered timely should be submitted within **TWO (2) MONTHS** from the mail date of this communication. Extensions of time under § 1.136(a) are not permitted. This period for reply is governed by § 1.181(f).

Alternatively, patentee is not precluded from seeking reinstatement of the patent under the stringent unavoidable standard. 37 CFR 1.378(b) provides that:

Any petition to accept an unavoidably delayed payment of a maintenance fee filed under paragraph (a) of this section must include:

- (1) The required maintenance fee set forth in § 1.20 (e) through (g);
- (2) The surcharge set forth in § 1.20(i)(1); and
- (3) A showing that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The showing must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

Any petition under 1.378(b) should be promptly filed.

Patentee is further advised that if the delayed payment of the maintenance fee is not ultimately accepted under 1.377 or 1.378, the maintenance fee and the surcharge set forth in § 1.20(i) (currently received \$1,030) will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for

reconsideration, if none is filed. However, any petition fee (\$200) under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Patent and Trademark Office.

For patentee's convenience, a change of address form to correct the correspondence address for the patent is enclosed.

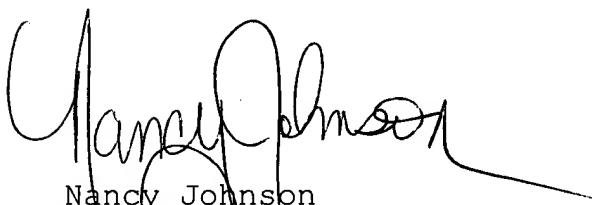
Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By fax: (571) 273-8300
ATTN: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries specific to this decision may be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Change of Correspondence Address - Patent